Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

October Term, 1996

PATRICIA W. GILL,

Petitioner,

vs.

DALKON SHIELD CLAIMANTS TRUST,

Respondent.

Petition For Writ Of Certiorari
To The Fifth Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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50 pp

QUESTIONS PRESENTED FOR REVIEW

1). Did the Court(s) err based on state requirements as opposed to federal requirements on this product as it relates to an expert to prove causation?

2). Did the Court(s) err in not applying the Texas Statute 402-A in accordance to Petitioners pleading on strict liability and negligence of the manufacture?

3). Did the Court(s) err in not considering the certified medical records of the petitioner to indicate causal connection based on use and complications of this defective product?

4). Did the Court(s) err by not recognizing the Dalkon Shield has Centers for Disease Control (CDC) and Food and Drug Administration (FDA) scientific evidence on injuries and complications that this product caused which were presented timely in the record?

5). Did the Court(s) err in not considering the Petitioner is a timely filed valid claimant, mandatory 3-A class member in this Mass Tort litigation with "opt out rights" as it relates to this bankruptcy settlement of the manufacture as shown in the record?

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REFERENCE TO OPINIONS DELIVERED

1. A. H. Robins Co. Inc., Debtor. Ch. 11, No. 85-01307-R Amended Administrative Order Number 1; June 26, 1991 J. Merhige, U.S. Dist. Ct. Eastern Dist Virginia

2. A. H. Robins Co. Inc., Debtor. Ch. 11, No. 85-01307-R Order Certifying Claimant(Patricia W. Gill) To Proceed With Litigation J. Merhige, U.S. Dist. Ct. Eastern Dist Virginia

3. *Patricia W. Gill v. Dalkon Shield Claimants Trust*, No. H-93-2764 (S.D. Tex Oct. 26, 1994). *Jury Trial granted.*

4. *Patricia W. Gill v. Dalkon Shield Claimants Trust*, No.H-93-2764 (S.D. Tex. Oct. 18, 1995). *Dismissed.*

5. *Patricia W. Gill v. Dalkon Shield Claimants Trust*, No. 95-21003 (5th Cir. July 26, 1996). *Dismissed.*

STATEMENT OF GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The Court of Appeals for the Fifth Circuit affirmed the decision of District Court of the Southern District of Texas, Houston Division on July 26, 1996.

The United States Supreme Court has jurisdiction to review this judgment under 28 U.S.C. 1257, which states in part, "[f]inal judgments. . .rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari. . ."in suits at common law, where the value in controversy shall exceed twenty dollars,

the right of trial by jury shall be preserved. . .and no fact tried by a jury, shall be otherwise re-examine in any court of the United States" is claimed under the Seventh Amendment of the United States Constitution.

Further grounds upon which this Court's jurisdiction is premised is stated in United States Supreme Court Rule 10 (a) "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." (c) "a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court," a petition for a writ of certiorari may be granted.

CONSTITUTIONAL PROVISIONS

SEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examine in any court of the United States, than according to the rules of the common law.

STATEMENT OF THE CASE

"On July 19, 1973 Patricia W. Gill who was then a nineteen year old wife and mother, was fitted with the device known as the "Standard Dalkon Shield," (DS), (the Shield), at the Louisiana Family Planning Clinic on the advice of the attending

physician, she endured considerable pain and bleeding upon insertion."[1] This device was manufactured and marketed nationally January 1971 by A.H. Robins("Robins"), in Richmond, Va.

Of the record, Response by Patricia W. Gill; Instrument No. 41 Appendix B, the following: medical records information Filed 6-22-95: in opposition to [40-1] Motion for Summary Judgment filed by the respondents;

> Gill accompanied her husband who was in the U.S. Army stationed at Fort Sill, Oklahoma in October 1973.
>
> Gill had numerous OB/GYN clinic, U.S. Reynolds Army Hospital, Fort Sill, Oklahoma, infections Nov. 28, 1973.
>
> On Dec. 11, 1973 5:30 p.m. OB/Gyn clinic visit U.S. Reynolds Army Hospital, abdominal pain, discharge, has IUD; cervix IUD string is DS, tachomonas. The shield expelled on its after Gill had worn if for five months. On December 18, 1973, Gill was fitted with the second shield.
>
> On Feb 27, 1974, 8:23 p.m. Emergency Room visit at U.S. Reynolds Army Hospital, Gill had passed out 20 minutes ago, vomiting, some abdominal pain IUD x 2 mo, 7 day period feuselin, patient stated she was sweating and eating ice. Vital Signs: T-98.6 BP-84/78 P-weak. Lab report: Urinalysis Feb 27, 1974. Exam: Abdomen, soft. Diagnosis: Viral Syndrome. Treatment: Home.

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[1] Factual aspects relied on petitioners medical records La. Family Planning Archives Section, New Orleans, La. 1988.

On July 13, 1974, 1:20 p.m. Emergency Room visit at U.S. Reynolds, abdominal pains, vag bleeding x 2 clogs. Vital Signs: T-99.2 BP-118/74. Lab report: Urinalysis Feb. 13, 1974. Left without being seen.

On July 29, 1974, 3:25 p.m. OB/GYN clinic U.S. Reynolds Army Hospital, BCP, BP-110/70 age 20, IUCD came out 2 1/2 weeks ago and thus MD put her on BCP(this was ?nd IUCD expulsion). cx sl brown stain.

On Jan. 27, 1975, 8:20 p.m. Emergency Room visit U.S. Reynolds Army Hospital, pain on right lower abdomen abdomen also swollen, BP-128/80 T-99.2 80-18, c/o one week pain in lower abdomen along inguinal ligament PE- one tiny, shotty nod in [R] inguinal region. IMP: Inguinal Pain ? cause. Possible muscle pull vs. tender node(doubt)."[2]

"Gill upon returning to Louisiana hospital visit 03-26-79 new O.B., Routine Urinalysis: Clinic at Huey P. Long Memorial Hospital, many Bacteria; Large Amorphous.

Gill on 4-19-79 underwent a gonorrhea test; the findings were Negative. Pregnant, Cervix Inflam and blood.

On August 1, 1979, Gill gave birth to a boy child.

Gill visited the La. Family Planning on 11-6-79 for birth control.

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[2] Factual aspect relied on above medical records, Certified Copy from the National Archives and Records Administration, National Personnel Records Center(Civilian Personnel Records), St. Louis, MO. Oct. 21, 1994.

Follow up visits 1-11-80 and 4-1-80.

Gill, ID-NUMBER (012-06958) on April 7, 1980, clinical visit to the La. Family Planning Clinic complaining of yellow discharge and itching. Infected cervix, Sumycin 250 mg for 8 days revisit 3 wks. If cervicitis persist will refer to HPL.

On 5-2-80 and 6-27-80 clinical visits birth control problem.

On 9-8-80 annual check up.

On Jan 12, 1981 clinical visit to the La. Family Planning Clinic, cervicitis, yellowish odorous d/c, lower abd. and back pain there is tenderness in both adnexal regions, DX, PID (1) AVC cream (2) Sumycin 1000 mg and 500 mg. Revisit 3 wks. Long orange size mass.

On Feb. 2, 1981 cervicitis and PID healed. Pt referred to GYN clinic at HPL re; possible fibroids.

On May 7, 1981 Gill was admitted to HPLMH "womb falling," pain and pressure, abd-soft pelvic, uterus small firm prolapses; adnexal masses DX/ Sup.

On 5-15-81 patient Gill, Patricia 26 year old for surgery for symptomatic uterine prolapse, total vaginal hysterectomy."[3]

On May 15, 1981, Huey P. Long Memorial Hospital, Pathological Laboratories, Patricia W. Gill age 26, service Dr. McWhorter. Specimen: uterus. Report: gross

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[3] Factual aspects relied on petitioners medical records La. Medical Records Archives, Pineville, La. 1988; Huey P. Long Memorial Hospital.

description specimen consists of open symmetrical uterus with cervix measuring 10.5 x 7.0 x 4.0 cm. and weighs 134.5 grams. Myometrium measures 2.7 cm. No tumors noted. Endometrium measures 0.1 cm. in thickness. Cervix is large but no lesions are apparent. Final Corrected Microscopic Diagnosis: Uterus-chronic metritis. Endometrium-early proliferative phase of the menstrual cycle. Cervix-cystic cervicitis. Examined by /s/ E.C. Uhrich M.D., PATHOLOGIST." [4]

A.H. Robins("Robins") filed for bankruptcy protection in 1985 due to massive lawsuits that was being filed against him on the Dalkon Shield.

In Jan. 1986 Gill through media campaign filed an intent to become a part of the Mass Tort class action of Robins with the U.S. Bankruptcy Court of Virginia, Richmond Division imposed a deadline of April 30, 1986 which Gill met this bar date.

A Plan of Reorganization("the Plan") of Robins, March 1988. Gill voted in favor of the Plan and in doing was entitled to be paid compensatory damages in lieu of punitive damages.

The Dalkon Shield Claimants Trust was formed to compensate any and all personal injury claims against Robins whether manifested or not.

Gill gave permission to "the Trust" during the Claims Resolution Facility process to obtain her entire O/B GYN medical records information in 1990 this was

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[4] Factual aspects relied on petitioners medical records La. Medical Records Archives, Pineville, La. 1988; Huey P. Long Memorial Hospital.

a bankruptcy requirement.

After Gill completed all requirements of the Trust process, petitioner was certified to proceed with litigation against the Trust in 1992.

Gill filed suit against the Trust (respondent) in September 3, 1993.

In the District Court Houston Division on October 16, 1995 issued a final summary judgment in favor of the Trust respondent. Gill did not have an expert opinion.

Gill filed a timely appeal in the Fifth Circuit on 01-05-96.

Gill filed in her brief stating that an expert opinion may not be necessary it the primary facts exist and they can be adequately presented to a jury an expert opinion may not be necessary.

The Fifth Circuit court affirmed the decision was the District Court Stated in their opinion this suit was frivolous and found nothing in the record to support petitioners claim for relief.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

A. SUMMARY OF ARGUMENT

The Dalkon Shield was introduced in the United States and many other counties, touted as *safe* and *effective*. Its failure affected millions of Americans and citizens abroad based on the manufactures deception and fraud, with no respect for

humanity.

In the District Courts Memorandum on "expert testimony is *required*," to establish causation in cases involving medical products, in this product liability cause of action and prove causal connection of petitioners use of two Dalkon Shields' and the injuries suffered by the petitioner. And state *requirement* of an experts opinion to prove causation.

On June 26, 1974, the FDA requested Robins suspend distribution of the Dalkon Shield... In August 1975, Robins announced it was abandoning plans to re-market the Dalkon Shield under new FDA regulations.

Petitioners case was dismissed in United States District Court the decision affirmed by United States Fifth Circuit Court of Appeals as being frivolous.

B. ARGUMENT

1. **This petition presents an important factor of federal regulation of a medical device. In *Tetuan* at the time (Robins) begin to market the Dalkon Shield, there were no government *requirements* for pre-market testing for IUDS. This device has been "banned," from the market based on the numerous complications it caused and in some cases death.**

"At the time Robins began to market the Dalkon Shield, there were no government requirements for pre-market testing for IUDs, but recommendations existed that all products be found to be effective and safe, and the 1969 World Health

Organization Report recommended a two-year testing program prior to marketing." SEE: Tetuan v. Robins cite a s738 P.2d 1210(Kan 1987) page 1217.

Hearings before the subcommittee on Health, 93rd Congress 1st Session, Sept. 1973; the Medical Device Amendments of 1973, to assure safety and effectiveness of medical devices by the following procedures: premarket scientific review of certain medical devices and promulgation of safety standards for other devices; establishment of regulations prescribing good manufacturing practices; increased scope of inspection of factories in which medical devices are manufactured; maintenance or records and submission of reports of clinical experience with devices; notification procedure and reimbursement for defective devices.

Dr. Russel J. Thomsen: Clinical Aspects of Intrauterine Contraceptive Device (IUD) Complications, testimony before the House of Representative, 93rd Congress, 1973, Titles Intrauterine Device Complication; 1). Insertion Pain; insertion time of 5.4 months, the pain is often compared "to having a baby each. Usually located in lower mid- abdomen, often spreads to either side of the lower abdomen, through to the back,...many take pain medication even narcotics." 2). Bleeding and Pain; excessive blood loss, heavy bleeding IUD users have an average menstrual blood loss more than twice that for other women. 3). Death and Critical Illness; complications of IUDS which can lead to the critical illness or death of a young woman can be many variations. But these complications can be generally classified as follows: acute pelvic infection directly associated with IUD insertion; acute pelvic infection with an IUD in place but not associated with the actual insertion; expulsion of the IUD.

SEE: 90 STATUTES 539,"BANNED DEVICES"

General Rule; "Sec. 516. (a) Whenever the Secretary finds, on the basis of all available data and information and after consultation with the appropriate panel or panels under section 513, that—

> "(1) a device intended for human use presents substantional deception or an unreasonable and substantial risk of illness or injury; and
>
> "(2) in the case of substantial deception or an unreasonable and substantial risk of illness or injury which the Secretary determined could be corrected or eliminated by labeling or change in labeling and with respect to which the Secretary provided written notice to the manufacturer specifying the deception or risk of illness or injury, the labeling or change in labeling to correct the deception or eliminate or reduce such risk, and the period within which such labeling or change in labeling was to be done, such labeling or change in labeling was not done within such period;

he may initiate a proceeding to promulgate a regulation to make such device a banned device..."

This product was removed from the open market based on the high rate of PID(pelvic inflammatory disease), infections and some cases of death.

Gill was unable to present an expert on her behalf. Placed timely in the record federal regulation, medical records of petitioner, scientific evidence, and statutory authority on this device supports Gills' claim based on use and complications she suffered.

a. The district court erred in their opinion on medical products which has no conclusive scientific evidence as this device has, and products that were not life threatening as this "device." The petitioner placed scientific evidence on the Dalkon Shield in the record, the Court discounted this evidence only as "journal articles."

The following scientific evidence on the Dalkon Shield in the record Instrument No. 41; Petitioners Opposition Motion filed 6-22-95 Exhibits C and D.

SEE: Tetuan v. Robins page 1220: Maternal Deaths Associated With An Intrauterine Device: Dr. C.D. Christian, Cases: young woman becoming violently ill with shield type device in place... presented with headache, nausea and vomiting, fever, chills, and low abdominal discomfort...treated for septic shock, she survived. Bacteriologic diagnosis was gram negative sepsis, profuse vaginal bleeding, endometritis, hemorrhagic shock; and death..."We must be constantly alerted to the slightest symptom or complaint. Painless dark brown spotting is common in most of the reported cases."[5]

Types of Intrauterine Device and the Risk of Pelvic Inflammatory Disease, Dr. Nancy C. Lee and others: "data from the Women's Health Study...interviews of 622 women

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[5] Factual aspects of evidence relied on in Maternal Deaths Associated with Dalkon Shield: From the Department of Obstetrics and Gynecology. Arizona Medical Center, the University of Arizona accepted for publication February 11, 1974. Dr. C.D. Christian, Tucson, Arizona. "The Family Planning Evaluation Branch Bureau of Epidemiology Center For Disease Control.

hospitalized with an initial episode of pelvic inflammatory disease...In this study, only 10% of women wearing an IUD were using the Dalkon Shield, yet they accounted for almost 20% of the excess risk of pelvic inflammatory disease for women currently using other methods. ...Dalkon Shield users, when considered separately, had a relative risk of 8.3(4.7 to 14.5), whereas u. ers of all other IUDS had risk of 1.6(1.2 to 2.0). Compared with users of other IUDS, Dalkon Shield users had five times the risk of pelvic inflammatory disease..." ..."the authors considered only those cases in which diagnosis of pelvic inflammatory disease was most certain, that is, the patients who had anatomic evidence of pelvic inflammatory disease seen during surgery..."[6]

Howard J. Tatum, MD. and others The Dalkon Shield Controversy... "The recent report of 209 cases of septic spontaneous abortion and 11 maternal deaths in the United States in women using the Dalkon Shield intrauterine device (IUD) raised the question about a possible relationship between the IUD and pelvic sepsis. It is essential to determine whether or not this sepsis is unique to the Dalkon Shield or generic to all types of IUDs. Our studies permit the conclusion that the tail of the Dalkon Shield is structurally and functionally different from the tails of the four other IUDs tested. The unique characteristics of the Dalkon tail theoretically could

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Factual aspect relied on of the above scientific study are as follows:

[6] (JAMA) Journal of American Medical Association July 1983, Vol 62 No 1; Dr. Nancy C. Lee and others Journal of the American College of Obstetricians and Gynecologist, Obstetrics and Gynecology, Types of Intrauterine Device and the Risk of Pelvic Inflammatory Disease.

provide a mechanism whereby pathogenic bacteria from the vagina enter the uterine cavity and cause sepsis."[7]

SEE: Tetuan v. Robins (page 1223) Morphological Studies of Dalkon Shield Tails Removed from Patients: Howard J. Tatum and others:..."These observations suggest that bacteria which have ascended through the tail from the vagina could exit through these breaks in the sheath or from the terminal end of the tail directly into the endometrial cavity..."[8]

SEE: Tetuan v. Robins cite as 738 P.2d 1210(Kan 1987) page 1223. The Intrauterine Device and PID Revisited: Dr. Nancy C. Lee and Others..."The first reports of the association between the Dalkon Shield abd pregnancy-related complications occurred in mid-1973...The Food and Drug Administration, however, did not advise physicians to remove it from nonpregnant women who were using the IUD without difficultly...Two previous Centers for Disease Control studies of pregnancy-related infections found an increased risk

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Factual aspect relied on of above studies are as follows:

[7] (JAMA) Journal of American Medical Association February 17, 1975, Vol 231, No 7; The Dalkon Shield Controversy (Structural and Bacteriological Studies of IUD Tails) Howard J. Tatum, MD, and others, Study presented to the (FDA) Food and Drug Administration on Oct 25, 1974.

[8] Contraception: Vol. 11 No. 4 April 1975, Morphological Studies of Dalkon Shield Tails Removed From Patients; Howard J. Tatum, MD and Others April 1975. Accepted for publication February 6, 1975. Editor Dr. Daniel R. Mishell, Jr., Dept of Obstetrics & Gynecology, University of Southern California School of Medicine, Los Angeles, Calif.

associated on with the multiparous-size Dalkon Shield...As both Dalkon Shield sizes have multifilament tails, the present findings are compatible with the theory that the tail is the probable source of infection."[9]

2. **In the District Court Memorandum of the Final Order stated that "expert opinion is required to prove causation" of a medical products, repeatedly compared this dangerous medical device to a medical products.**

See: Medtronic Inc v. Lohr, (95-754 & 95-886), US Law Week, 64 LW page 4628 and 4634, Supreme Court Opinions June 26, 1996. 21 U.S.C. 360K(a)

"360 K.—State and local requirements respecting devices

"(a) General rule

"Except as provided in subsection (b) of this section, no State may establish or continue in effect with respect to a device intended for human use requirement—

"(1) which is different from, or in addition to, any requirement applicable under this chapter to the device, and

"(2) which relates to the safety or effectiveness of the device or to any other matter

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Factual aspect relied on of above studies are as follows:

[9] American College of Obstetrics and Gynecology Vol 72 No. 1 July 1988, The Intrauterine Device and Pelvic Inflammatory Disease Revisited: New Result From the Women's Health Study: from the Division of Reproductive Health, Center for Health Promotion and Education, Centers for Disease Control, Atlanta, Ga.

included in a requirement applicable to the device under this chapter."

"State requirements must be "with respect to" medical devices and "different from, or in addition to "federal requirements. State requirements must also relate "to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device, "and the regulations provide that state requirement of "general appealability" are not pre-empted except where they have "the effect of establishing a substantive requirement for a specific device."

3. The District Court indicated in the Memorandum of the Order that petitioner is "using other cases to show she was injury." The *Tetuan, Palmer* and *Hilliard* standards proves the types of complications other victims suffered and PID (pelvic inflammatory disease) diagnosis and the manufactures conduct.

Tetuan (1222) On September 2, 1971, a Robins Quality Control Supervisor...including "[w]icking and bacterial problems associated with the multifilament nylon sutures versus a sheathed nylon suture." The significance of the wicking tendency of the tailstring of an IUD is that it provides an avenue for bacteria to travel from the vagina in the uterus, causing infection."

"In 1973, Robins received several reports of PID(pelvic inflammatory disease) associated with the Dalkon Shield..."

Tetuan(1223) "Expert testimony was also introduced at trial comparing PID rates for the Dalkon Shield and other IUDs. The 1976 Center for Disease Control (CDC)...The 1983 Lee-Ory study concluded the Dalkon Shield had a PID risk eight

times higher than for women who did not use any IUD..."

In "Palmer v. Robins, 684 P. 2d 187 (Colo 1984) page 197... November 18, 1973, when she became violently ill with influenza-like symptoms...an involuntary miscarriage caused by blood borne bacterial infection centered in the uterine area. Palmer subsequently went into septic shock...with concomitant fall in blood pressure to dangerously low level...Allows for similar signs, symptoms and suffering of the petitioner Gill during the similar years."

In "Hilliard v. A.H. ROBINS CO. cite as 196 Cal Rptr. 117 (Cal App. 2 Dist. 1983) ... May 4, 1974, plaintiff was in the emergency room, vomiting, feeling "really sick" and experiencing severe abdominal pain..."

The petitioner on emergency room visit Gill suffered repeated abdominal pain, heavy bleeding, pelvic infections, a diagnosis of viral syndrome, fainting, vomiting, low blood pressure and weak pulse, as other women suffered.

Gill diagnosed with PID(pelvic inflammatory disease) in 1981 six years after Dalkon Shield use and had a total vaginal hysterectomy (removal of cervix and uterus) microscopic diagnosis was "chronic metrtis" respondents expert did not indicate in his opinion what caused Gill to contract PID.

a. **The district court questioned petitioners competence in forming their opinion, about her own suffering and complications of the Dalkon Shield. The petitioner is not forming an opinion petitioner is stating how she suffered with this device.This case was of Mass Tort litigation and**

bankruptcy of the manufacture "Robins", the district court mad no effort to have a hearing to determine factual aspects in this case since the statute of limitation was not a burden of proof.

The petitioner Gill was categorized as a "mandatory class member", by meeting the bankruptcy court of Richmond, Virginia bar date of April 30, 1986. This case had a federal Plan of Reorganization of the manufacture "Robins", that the petitioner voted for. These factual aspects of this case was totally ignored.

b. The Fifth Circuit Court of appeals on their normal standard of review perform de novo. When circuit courts have ruled on the same subject matter, standards for "evidence of similar accidents are admissible" in *Worsham*.

"Evidence of similar accidents and injuries is admissible in products liability action to prove harmful tendency or capacity of product
and defendant's knowledge thereof; however, for evidence to be relevant, proponent of it must show similarity of conditions and the occurrences are not too remote in time."

If the Court of Appeals had made an independent evaluation of the record in this case by properly analyzing federal regulation, applicable case law, scientific evidence, and petitioner's medical records it would have concluded that the district court improperly denied Gill the right to contest the defendants expert since the petitioner is the victim in this case.

The Court of Appeals based its opinion of the following:

(1) Deference to the district court's finding.

(2) "Petitioner had no expert to prove causation as required by state law."

(3) "Appellant is not an expert in the medical field".

(4) Statutory authority was not case specific to signify similar signs and symptoms of other users of the device was ignored.

However, all four factors have been discounted by the cited case law. As for (1) if the Fifth Circuit court of appeals would have studied the 1973 Medical Device Amendment, based on a defective product and a manufactures duty when placing a device on the market , statutory authority of this particular device, scientific evidence of conclusive complications the Dalkon Shield caused when it was on the market, the outcome of this case would have been in favor of the petitioner. As for (2) scientific evidence is used by the FDA(Food and Drug Authority) and the CDC (Centers for Disease Control) to determine the effectiveness of products before they are placed on the market and in court cases involving medical devices(products) were placed timely in the record and ignored by both courts and state law requirement in this case is well above federal law. As for (3) the "Dalkon Shield" history is widely known for numerous complications it caused to the users and the defendants expert gave an opinion as though this was a new device just placed on the market for consumer use without relating to his methodology for his opinion with no alternate causation for petitioner contracting PID.

c. **And also in *Walker v. Messersdhmitt Bolkow Blohm GmBH;* Cite as 844 F.2d 237(1988),**

United States Court of Appeals 5th Circuit (May 10, 1988). "admissibility of similar accidents evidence".

In a product liability action arising from a helicopter crash, the district court did not abuse its discretion in admitting evidence of other "collective bottoming incidents" (incidents where a helicopter loses power and all ability to gain altitude), the circumstances surrounding which it found to be substantially similar to the facts that had occurred just before the crash at issue. A manufacturers knowledge of the defect and whether the design was inadequate.

4. **The respondent expert gave an opinion "riddled" with inconsistencies of the petitioners medical records. Omitting an opinion on PID diagnosis in petitioners pathology report in the record.**

The respondents expert gave an opinion that was riddled with inconsistencies and rendered no scientific data for his findings other than "it would have happened to her anyway".

The respondents expert Dr. Baker did not give an alternate causation for Gill being gravely ill in 1973, 1974 and medically where did the PID(pelvic inflammatory disease) in Gills pathology report come from?

The respondents expert stated that a symptomatic uterus prolapse occur in woman of multiple child bearing, when in fact petitioner only has two children and was 26 years old when her hysterectomy was performed.

a. **The respondent stated petitioners "own medical records are incompetent," when in fact the**

respondents have three copies of these records, which petitioner gave respondent permission to obtain her entire OB/GYN history. Medical records to prove use and complications was requirement during bankruptcy.

5. **The court(s) did not apply the law as it relates to strict liability and negligence Restatement of Tort 402-A Statute as stated in petitioners pleading and ignored statutory authorities on the same subject matter as it relates to complications of the device.**

RESTATEMENT (SECOND) OF TORTS 402A (1965)

"In Texas, a plaintiff can predicate a products liability action on one or more of at least three theories of recovery:(1) strict liability under

[Restatement(Second)of Torts] 402A, (2) breach of warranty under the U.C.C., and (3) negligence." See: Erie R.R. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L. Ed. 1188(1938).

The Texas Supreme Court adopted the rule of strict liability embodied in the Restatement (Second) of Torts 402A(1965), which provides:

> (1) **One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer or to his property, if**
> **(a) The seller is engaged in the business of selling a product, and**
> **(b) It is expected to and does reach the user or**

consumer without substantial change in the condition in which it is sold.

(2) The rule state in Subsection (1) applies although

(a) The seller has exercised all possible care in the preparation and sale of his product, and

(b) The user or consumer has not bought the product from or entered into any contractual relation with the seller.

The petitioner Gill presented the appeals court in her brief similar Statutory Authorities of similar sufferings of other victims of the Dalkon Shield, and it was not mentioned when the court gave their opinion. The district court stated "Gill believes that similarities of suffering are admissible to form an opinion".

The petitioners pleading on strict liability and negligence on the manufactures conduct was not mentioned as the courts rendered their opinions.

The Dalkon Shield was a product used by millions of women in 1970's, in United States and other countries, had public outcry for removal from the market due to the high number of complications it caused to many users. The court of appeals and the district court erred in not recognizing the pleading in this product liability cause of action is a "device" not a medical product.

In conformity to the fraudulent conduct of the manufacture as well as the device itself was a fundamental failure. In this cause of action, evidence and historical data clearly indicates this product was defective.

Petitioner is not a medically trained individual but is competent enough to know she was not ill as a younger child and never visited the doctor for any serious illness before this product was placed in her body.

The respondents expert stated in his opinion problems the petitioner endured in "no way related to her use of this product" has not given and alternate causation to her illness and ultimate hysterectomy other than a "symptomatic uterine prolapse normally occur in woman who have numerous pregnancies," when in fact the petitioner only has two children, and the expert stated these problems "would have happened anyway."

SEE: Defendants expert opinion in the record as INSTRUMENT 40: Expert Opinion, noted June 10, 1995. The medical records presented in this case was the same requirement to show use and complications of the product of U.S. Bankruptcy Court in Richmond, Va. to be certified to proceed with litigation against the respondent.

The physicians who treated the petitioner were not aware in 1973 and 1974 of the true dangers of this product because of the fraudulent concealment and misrepresentation of the manufacturer (Robins), when this product was on the market many physicians did not know the dangers it caused.

This device was removed from the market by the FDA because of design defect and numerous complications it caused to the users. This particular device was placed on the market virtually untested, with a defective tail string causing bacteria from the unsterile vagina to enter into the sterile uterus causing serious pelvic infections and has been linked "scientifically" to have caused PID(pelvic inflammatory disease) and in some cases death.

The manufacture (Robins) introduced this product on the market as being safe and effective method of birth control intended for human use without making any changes to make the device safe.

The necessity of an expert opinion to prove causation according to Texas law as the District court stated in their decision did not recognize this particular device and other IUD'S, was the basis of the Medical Device Amendment Act of 1976.

Testimony of Dr. Russel Thomsen in the 93rd Congressional Hearings, September 17, 1973, requesting that these types of devices should have regulations and premarket approval before being released for human use. This product had many complications and unforeseeable risk associated with its use. The Dalkon Shield has been known to cause acute pelvic infections after insertion and pelvic infections while in place, lower and mid abdominal and back pain and heavy bleeding.

The Dalkon Shield was a product on the market between 1970 and 1974 and the *requirement* of the FDA at that time was the product had to be *safe* and *effective*. This particular product failed those requirements and was removed from the market in 1974 by the FDA.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests this Honorable Court to this petition.

Respectfully submitted,

Patricia W. Gill

Patricia W. Gill,
Pro Se
5918 Willow Glen Drive
Houston, Texas 77033
(713) 738-7058

UNREPORTED

IN THE FIFTH CIRCUIT COURT OF APPEALS

PATRICIA W. GILL,

Plantiff-Appellant,No. 95-21003

verus

DALKON SHIELD CLAIMANTS TRUST,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 93-2764

BEFORE:
GARWOOD, WIENER, and PARKER,
Circuit Judges.

Per Curiam*

Filed: July 26, 1996

Patricia W. Gill appeals the grant of summary judgment for Dalkon Shield Claimants Trust, raising several issues that do not address the basis of the judgment. We have carefully reviewed the record and appellate arguments. We find no errors in the district court's ruling. See Gill v. Dalkon Shield Claimants Trust, No. H-93-2764 (S.D. Tex. Oct. 18, 1995).

The appeal is without arguable merit and thus frivolous. See 5th Cir. R. 42.2. Because the appeal frivolous, it is DISMISSED.

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* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under limited circumstances set forth in Local Rule 47 .5.4.

UNREPORTED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PATRICIA W. GILL,
Plaintiff

VS. CIVIL ACTION NO. H-93-2764

DALKON SHIELD CLAIMANTS TRUST, OCTOBER 18, 1995
Defendant

MEMORANDUM AND ORDER GRANTING SUMMARY JUDGMENT

Pending before the court in the above referenced action alleging product liability for the Dalkon Shield intrauterine device("IUD"), resulting in personal injury,[1] are Defendant Dalkon Shield Claimants Trust's motion for summary judgment (instrument # 40) and pro se Plaintiff Patricia W. Gill's motion for summary judgment (#47).

Defendant moves for summary judgment arguing that Plaintiff is unable to produce competent medical evidence demonstrating that her alleged injuries were caused by her use of the Dalkon Shield IUD. This lack of proof of causation entitles Defendant to summary judgment. At her deposition Plaintiff testified that no doctor has told her that the Dalkon

[1] Plaintiff claims that she used two IUDs in 1973 and in 1974 that caused her injuries.

Shield IUD caused her claimed injuries and stated that she had no documents that satisfied Defendant's request for "[a]ll reports, summaries or other compilations of information made by any medical practitioner or other expert concerning the injuries alleged by Patricia W. Gill to be a consequence of her use of the Dalkon Shield IUD, or concerning their cause, which... plaintiff intends to use at trial." Moreover she has failed to designate an expert witness on causation, and the deadline was April 4, 1995. Meanwhile Defendant's expert, board-certified obstetrician/gynecologist Dr. Benton Baker, III is expected to testify that Plaintiff's use of the Dalkon Shield IUD in 1973 and 1974 is unrelated to her gynecological problems.

Defendant points out that Plaintiff states that she has reviewed her medical records and alone determined that the IUD caused her injuries Defendant emphasizes that Plaintiff is not a physician and has not had medical training. Because she does not qualify as an expert, maintains Defendant, she cannot testify to causal relationship between the IUD and her injuries. Expert testimony is required to establish causation in cases involving medical products. Rohrbough v. Wyeth Laboratories, Inc., 916 F. 2d 970, 972 (4th cir, 1990); Novak v. United States, 865 F. 2d 718, 724-25 (6th Cir, 1989); Chaney v. Smithkline Beckman Corp., 764 F. 2d 527, 529-30 (8th Cir. 1985); Poindexter v. Foster, 772 S.W. 2d 205 (Tex. App.—Beaumont 1989, writ denied, n.r.e.) (patient-layperson's affidavit is incompetent evidence to controvert sworn testimony of a medical expert); Garza v. Levin, 769 S.W. 2d 644 (Tex App.—Corpus Christi 1989, writ denied, n.r.e.). See also Skotak v. Tenneco Resins, Inc., 953 F .2d 909, 915 (5th Cir. 1992) ("The nonmoving party cannot discharge [its] burden by referring to the 'mere allegations or denials of the nonmoving party's pleading; rather the party must, either by submitting opposing

evidentiary documents or by referring to evidentiary documents already in the record, set out specific facts showing that a genuine issue exists."), cert. denied, 113 S. Ct. 98 (1992); Romano v. Merrill, Lynch, Pierce, Fenner & Smith, 834 F. 2d 523, 529 (5th Cir. 1987) (party opposing motion for summary judgment cannot rest upon conclusory allegations unsupported by any facts), cert. denied, 487 U.S. 1205 (1988).

Plaintiff responds by arguing that Defendant's motion was made in bad faith based on her unsigned deposition. She claims that she returned the signature page with changes and medical evidence. Referring to various published articles and cases for historical cases similar to hers, Plaintiff insists that she can prove by a preponderance of the evidence each element of her cause of

action. She complains of inaccuracies and omissions in Dr. Baker's affidavit. She objects also that an unsigned motion and supporting memorandum were sent to her without the date of service in violation of federal rules.

Defendant replies that Plaintiff has failed to produce competent factual evidence on the critical issue of case-specific medical causation, on which she has the burden of proof at trial. Defendant reiterates that because expert testimony is essential to establishing causation in cases involving medical products, Plaintiff's lack of any expert testimony is fatal to her claim. Her personal medical records that she attaches to her response do not contain any evidence of a causal relationship between the IUD and her injuries. Furthermore argues Defendant, Plaintiff's own interpretation of her medical records is not competent evidence. Moreover she cannot produce causation evidence from any of her treating physicians because she admitted at her deposition that no doctor ever told her

that her injuries were linked to the Dalkon Shield IUD. Defendant contends that the journal articles and transcript from a "60 Minutes" television show submitted by Plaintiff are general in nature and do not address the specific issue of Plaintiff's use of the Dalkon Shield IUD and her particular injuries. Settlement negotiation documents submitted by Plaintiff are inadmissible to establish liability under Fed. R. Evid. 408. Moreover, asserts Defendant, Plaintiff's charges about use of her unsigned deposition are meritless and irrelevant because on the day she was deposed, March 20, 1995, Plaintiff agreed that an unsigned copy of her deposition could be used if she did not sign it within three weeks. On June 8, 1995 the court reporter filed the unsigned deposition after Plaintiff failed to sign it when contacted. In addition, notes Defendant, nothing in the deposition raises a fact issue about causation. Finally, Defendant maintains that it sent Plaintiff signed copies of the motion and supporting memorandum.

Plaintiff responds to the reply that she has proven causation through her proof, citing published cases and journal articles, that A.H. Robins fraudently concealed defects and misrepresented the product, placed it on the market untested, and failed to warn plaintiff of the dangers. She argues that expert testimony is not necessary if the primary facts are accurately presented to the jury and the jury is capable of drawing conclusions and that expert evidence, though not required, may be admissible if it will aid the jury in resolving the issues.

Plaintiff also moves for summary judgment because there is a genuine issue of material fact based on the medical documentation she has filed with the Court and she agues that she has proven medical causation. She maintains that studies showing a link between the higher rate of Pelvic Inflammatory

Disease and the Dalkon Shield IUD over other IUD's are admissible, and that those studies are the opinions of experts.

Defendant responds that Plaintiff illogically has moved for summary judgment because, as Plaintiff states, there is a genuine issue. Defendant asserts that Plaintiff has not proven causation or provided any competent medical evidence on the issue. It summarizes, "Plaintiff, a pro se litigant who has consistently rejected advice to obtain counsel, clearly does not appreciate the requirements and purposes of Rule 56."

The movant seeking a federal summary judgment initially must inform the court of the basis for its motion and point out those portions of the pleadings, depositions answers to interrogatories, and admissions on file that demonstrate the absence of genuine issue of material fact and show that it is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The movant need not negate the opposing party's claims nor produce evidence show an absence of a genuine factual issue but may rely on the absence of evidence to support essential elements of opposing party's claims. International Assoc. of Machinists & Aerospace Workers, Lodge No. 2504 v. Intercontinental Mfg. Co., 812 F. 2d 219, 222 (5th Cir. 1987). The burden then shifts to the non-movant to set forth specific facts and competent summary judgment evidence to raise a genuine issue of material fact on each essential element of any claim on which he bears the burden of proof at trial. Fed. R. Civ. P. 56(c). The substantive law governing the suit identifies the essential elements of the claims at issue and therefore indicates which facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The non-moving party may not rest on mere allegations or denials in its pleadings but must produce affirmative evidence and specific facts. Anderson, 477 U.S. at

256-57. It meets this burden only if it shows that "a reasonable jury could return a verdict for the non-moving party." Id . at 254. A mere scintilla of evidence will not preclude granting of a motion for summary judgment. Id. at 252.

All resonable inferences must be drawn in favor of the non-moving party. Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574. 587-88 (1986), citing United States v. Diebold, 369 U.S. 654, 655 (1962). Once the burden of proof has shifted to the non-movant, he "must do more that simply show that there is some metaphysical doubt as to the material facts." Id. at 586.

The Court concurs with Defendant that Plaintiff does not comprehend the purpose and requirements of a motion for summary judgment under Fed.R. Civ. P. 56 as it applies to her case. Defendant has cited cases indicating that it is established law that expert testimony is mandatory to establish causation for a defective medical product claim. See also Merrell Dow Pharmaceuticals, Inc. v. Hayner, 1995 WL 471883 at *4 (Tex. App.—Corpus Christi, August 10, 1995) (assistance of experts to show causation in birth defects case.), citing Lenger v. Physician's General Hospital, Inc., 455 S.W. 2d 703, 708 (Tex. 1970)(medical testimony required to establish causation of medical ailment in case where cause is not readily ascertainable), and Hernandez v. Texas Employers Ins. Ass'n, 783 S.W. 2d 250, 253 (Texas. App.—Corpus Christi 1989, no writ) (reversing jury finding of causation in absence of medical testimony to causation of asthma). Plaintiff has failed to produce any evidence that shows that her use of the IUD in 1973 and 1974 caused injury to her. Proof that injury was caused to other people does not establish

that the Dalkon Shield caused injury to her. See generally Pennington v. Vistron Corp., 876 F.2d 414, 426 (5th Cir. 1989). Accordingly, the Court ORDERS that Defendant's motion for summary judgment is GRANTED and Plaintiff's motion for summary judgment is DENIED.

SIGNED at Houston, Texas, this 18th day of October, 1995.

/s/ Melinda Harmon
MELINDA HARMON
UNITED STATES DISTRICT JUDGE

UNREPORTED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PATRICIA W. GILL,
Plaintiff

VS.

CIVIL ACTION NO.
H- 93-2764

DALKON SHIELD CLAIMANTS TRUST,
Defendant

October 18, 1995

FINAL SUMMARY JUDGMENT

Pursuant to the memorandum and order signed on this day, the Court

ORDERS that FINAL SUMMARY JUDGMENT is GRANTED in favor of Defendant Dalkon Shield Claimants Trust against Plaintiff Patricia W. Gill. Plaintiff shall take nothing and shall bear all costs of court.

THIS IS A FINAL JUDGMENT.

SIGNED at Houston, Texas, this 18th day of October, 1995.

/s/ Melinda Harmon
MELINDA HARMON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PATRICIA W. GILL, CIVIL NO. H-93-2764
Plaintiff,

verus OCTOBER 26, 1994
DALKON SHIELD CLAIMANTS
TRUST
Defendant.

ORDER FOR JURY TRIAL

Pursuant to Rule 39 (b) the Motion for Trial By Jury, Instrument #15, is hereby GRANTED.

Signed at Houston, Texas, this 25th day of October, 1994.

/s/ Frances H. Stacy
UNITED STATES
MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Richmond Division

In Re:

A.H. ROBINS COMPANY,
INCORPORATED,

Chapter 11
No. 85-01307-R

Debtor.

EMPLOYER'S TAX IDENTIFICATION No. 54-0486348

RETAINED PROCEEDING
(Judge Merhige)

AMENDED ADMINISTRATIVE ORDER NUMBER 1 GOVERNING DALKON SHIELD ARBITRATION AND LITIGATION

For the reasons stated in the Memorandum filed on this cause on June 26, 1991, and having ascertained that the Order accompanying said Memorandum contained typographical errors and omissions, it is Adjudged and Ordered that said Order of June 26, 1991, shall be and is of no force or effect and that the instant Order is substituted therefore.

For reasons stated in the Memorandum filed in this cause on June 26, 1991, and in accord with the Plan of Reorganization in this cause deeming it proper so to do, it is ADJUDGED AND ORDERED as follows:

1. Every holder of a Dalkon Shield Personal Injury Claim and every person (including counsel) commencing binding arbitration or commencing recommencing litigation of a Dalkon Shield Personal Injury Claim under Section E.5 of the Claims Resolution Facility shall be bound by this Order. (Such holders, persons and counsel are referred to herein as

"Claimant"; such arbitrations and litigations are referred to herein as "Arbitration" and "Litigation".) Every Arbitration arbitrator shall likewise be bound by this Order.

2. No Claimant shall commence Arbitration of shall commence or recommence Litigation until this Court certified by entry of an order, upon the application of the Trust, that: (i) the claims review process respecting the applicable Dalkon Shield Personal Injury Claim has been completed in accordance with the Claims Reso! ıtion Facility("CRF"), and (ii) as a matter of law, where a Claimant intends ot proceed with such Arbitration of Litigation in a venue outside the United States, the venue is appropriate and the courts of such venue and jurisdiction will honor and enforce (whether by reason of the Claimant's stipulation or otherwise) this Order and the Plan. Such certification may be revoked upon a subsequent showing that the procedures of the CRF were purposefully or materially circumvented, or that the certification was otherwise improvidently granted, in which event the applicable Arbitration or Litigation may be ordered dismissed or stayed by this Court.

3. This Court retains jurisdiction as provided by Section 8.05 of the Plan, and by applicable law, including exclusive jurisdiction as against any Arbitration or Litigation:

a. to resolve controversies and disputes regarding interpretation and implementation of the Plan, the Trust Agreements, the CRF, the releases obtained by the Trusts (or either of them), any amend ments of the Trust Agreements, and in accordance with the provisions of the CRF, any disputes relating to whether or not a timely and proper notice of claim was filed, the rights of holders of Late Claims and whether a Disallowed Claim should be reinstated:

b. to enter orders in aid of the Plan, the Trust

Agreements, the CRF and releases obtained by the Trusts (or either of them), including, but not limited to, appropriate orders (which may include contempt or other sanctions) to protect the Debtor, the Successor Corporation, AHP, any of the Affiliates thereof and other Persons from actions prohibited under Article VIII of the Plan;

c. to modify the plan pursuant to Section 9.06 of the Plan; and

d. over actions challenging the validity and enforceability of the releases and injunctions referred to in Sections 8.03 and 8.04 of the Plan.

4. The Trust shall maintain a document depository in Richmond, Virginia, containing substantially all documents which the Trust, using its best efforts, has identified as having been produced without qualification by Robins in pre-petition Dalkon Shield personal injury tort litigation. Upon reasonable written notice to the Trust, a Claimant may visit the depository at any time during working hours and will have full access to all documents and videotapes located there. A coping service will be located on or near the depository premises where copies of any document or videotape may be made at the Claimant's request and expense.

5. In addition to maintenance of the document depository described in Paragraph 4, the Trust shall, upon request, provide to a Claimant who has properly elected Arbitration or Litigation, free of charge, the catalog that indexes materials and documents used in previous Dalkon Shield personal injury tort litigation and which was developed and compiled by the law firm formerly known as Robins, Zelle, Larson & Kaplan, with the cooperation of other attorneys throughout the country, and which was distributed by Minnesota Trial Lawyers Association. The Claimant may obtain, at the Claimant's

expense, any materials and documents from this catalog by placing an order for them directly with the copying which maintains these catalogued materials and documents.

6. No discovery by a Claimant against nay person or entity shall be conducted in connection with any Arbitration or Litigation except:

a. as provided in Paragraphs 4 and 5 above;

b. discovery against persons or entities, including doctors, hospitals and other health care providers, not a party to the Arbitration or Litigation but excluding Robins, AHP, the Successor Corporation, Aetna, any of their respective Affiliates and any of their present or former officers, directors, employees, attorneys, agents, or representatives;

c. discovery against the Trust solely through the use of interrogatories and requests for admissions which shall be limited to issues related to individual Dalkon Shield Personal Injury Claims and which shall not include issues of Trust administration, provided, however, that discovery shall be permitted against persons identified by the Trust as expert witnesss to be called by the Trust in the respective Arbitration or Litigation;

d. as provided by the rules developed by the Trust respecting Arbitration; and

e. as further ordered by this Court upon request of the Claimant. All discovery disputes arising in Arbitration or Litigation may be resolved by this Court.

7. No Arbitration or Litigation shall be filed or proceed against any person or entity other than the Trust except as provided in Section 8.04 of the Plan respecting Unreleased Claims. No claim alleged to be an Unreleased Claim shall be asserted against any person or entity absent an order by this Court finding that such claim satisfies the provisions of Section

1.85 of the Plan.

8. Following the entry of the certification order described in Paragraph 2 above, service of process on the Trust in the respective Arbitration or Litigation may be made by certified U.S. first-class mail, return receipt requested to Linda J. Thomason, Counsel, Dalkon Shield Claimants Trust, P.O. Box 1314, Richmond, Virginia 23210. Service by this means shall be effective upon receipt by the Trust.

9. No Claimant shall seek, directly or indirectly, or be awarded in the nature of trebled, exemplary, punitive or similar damages, or attorneys' fees in any Arbitration or Litigation.

10. Any Claimant commencing Arbitration or commencing or recommencing Litigation shall forthwith:

a. conform all pleadings to the terms of this Order by substituting the Trust as the defendant, by deleting or dismissing all other defendants and respondents (except insofar as an order has been obtained pursuant to Paragraph 7 above, respecting an Unreleased Claim), by deleting or dismissing any claim for punitive damages and by taking all other necessary action; and

b. file this Order and the certification order described in Paragraph 2 above with the Arbitration or Litigation court as exhibits to, and incorporated in, the initial pleadings commencing Arbitration or commencing or recommencing Litigation.

11. This Court may stay or order the parties to seek a stay of any Arbitration or Litigation upon a showing by the Trust(i) of undue prejudice due to the multiplicity of ongoing, pending or scheduled trials or arbitration hearings or (ii) that an Arbitration or a Litigation is proceeding in violation of this Order, in contravention of this Court's jurisdiction or in

violation of the Plan.

12. The Trust, any Claimant, any arbitrator involved in, and any award resulting from, an Arbitration shall comply with the rules developed by the Trust respecting Arbitration. Judicial review, if any, of an Arbitration or an Arbitration award shall be, in the first instance, by this Court.

13. No levy against the Trustees, the Trust or its assets may be made as a result of any Arbitration or Litigation. Until further order of this Court, in order to assure the continued availability of funds to all valid Dalkon Shield Personal Injury Claims and in order to further the other proper purposes of the Plan, Trust and CRF, in satisfaction of all awards or judgments (including awards or judgments of costs, fees or disbursements) obtained as a result of Arbitration or Litigation, the Trust shall:

a. pay initially only that portion of such an award or judgment which does not exceed the greater of $10,000.00 or the final settlement offer made by the Trust under Option3, Section E.4 of the CRF; and

b. after the payment in full of all valid, timely Dalkon Shield Personal Injury Claims which are settled under Options 1 or 2 under Option 3, Sections E. 1-4 of the CRF, or at such time as the Trustees are satisfied that all valid, timely Dalkon Shield Personal Injury Claims can be fully paid, next pro rata from any Trust assets available for that purpose the unpaid balances of all Arbitration awards and Litigation judgments.

14. The Trust shall give notice by mail of the entry of this Order, accompanied by a signed copy of the Order, to all claimants holding timely or late-filed Dalkon Shield Personal Injury Claims or to their counsel, as reflected by the records of the Trust.

15. A Claimant who desires relief from this Order shall file an appropriate motion in this Court stating the particular circumstances warranting such relief.

July 1, 1991
nunc pro tunc
DATE: June 26, 1991

/s/Robert R. Merhige, Jr.
ROBERT R. MERHIGHE, JR
UNITED STATES DISTRICT JUDGE

/s/Blackwell N. Shelley
BLACKWELL N. SHELLEY, per R.R.M
UNITED STATES DISTRICT JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In Re:
A.H. ROBINS COMPANY, INC., No. 85-01307-R
Debtor.

Retained Proceeding
(Judge Merhige)

EMPLOYER'S TAX
IDENTIFICATION No.
54-0486348

Entered on Docket

ORDER CERTIFYING CLAIMANTS TO PROCEED WITH LITIGATION

Whereas, the Dalkon Shield Claimants Trust ("the Trust") has determined that Claimant **PATRICIA W. GILL,** DS Number **276879**, ("Claimant") has completed the claims review process as mandated by the Claims Resolution Facility ("CRF"); and

Whereas, the Trust has requested this Court to certify that she may commerce or recommence litigation against the Trust in accordance with the Amended Administrative Order

Lynn Crowder Greer, VSB No. 29211
Dalkon Shield Claimants Trust
1313 East Main Street (23219)
Post Office Box 1314 (23210)
Richmond, Virginia
(804) 783-8600

NOTICE OF JUDGMENT OR ORDER
Entered on Docket SEP 11 1992

Number 1 Governing Dalkon Shield Arbitration and Litigation (Administrative Order Number 1") and the CRF; and deeming it proper to do so, it is hereby

ORDERED that Claimant is no longer enjoined by Section 8.04 if the Plan from commencing or recommencing litigation against the Trust, and is certified to proceed with the Administrative Order Number 1 and the CRF.

Let the Clerk send a certified copy of this Order to Patricia W. Gill, 5918 Willow Glen, Houston, TX 77033, the claimant.

Date: 9-10-92

/S/_____
UNITED STATES DISTRICT JUDGE

I ASK FOR THIS:

/s/ Lynn Crowder Greer
Lynn Crowder Greer, VSB No. 29211
Dalkon Shield Claimants Trust
1313 East Main Street (23219)
Post Office Box (23210)
Richmond, Virginia
(804) 783-8600

Counsel for Dalkon Shield Claimants Trust